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BANKRUPTCY—PREFERENTIAL TRANSFERS—The federal Bankruptcy Act of 1898,¹ as amended by Act of 1903, provides: "A person shall be deemed to have given a preference if, being insolvent, he has, within four months before the filing of the petition . . . , made a transfer of any of his property, and the effect of the enforcement of such transfer will be to enable any one of his creditors to obtain a greater percentage of his debt than any other of such creditors of the same class. If a bankrupt shall have given a preference, and the person receiving it, or to be benefited thereby, or his agent acting therein, shall have had reasonable cause to believe that it was intended thereby to give a preference, it shall be voidable by the trustee, and he may recover the property or its value from such person."

Several cases have arisen of attempts to evade this section by agreements entered into prior to the prescribed period of four months and consummated by the perfection of the lien within the period; such a lien has uniformly been held to be ineffectual and a voidable preference. An example of this occurred in the recent case of *In re Cotton Manufacturer's Sales Company*,² where the Sales Company prior to the four months' period, made an agreement with a bank to assign to the bank all of its accounts receivable thereafter created, the bank agreeing to advance to the Sales Company eighty per cent. of the face value of such accounts as it approved. Thereafter, the Sales Company, within four months prior to its bankruptcy, did assign to the bank various accounts, some of which the bank held as collateral security for antecedent loans; at this time, due to the circumstances, the bank was legally chargeable with constructive notice of the insolvency of the Company. Counsel for the bank argued that the actual assignments of the accounts refer back for their force and effect to the date of the agreement, which having been made more than four months before the bankruptcy, saves all the subsequent dealings of the parties from the effect of the bankruptcy. But the court overruled this contention and held the assignment to be a voidable preference. This is the only proper holding if Section Sixty of the Bankruptcy Act is to be more than a mere dead letter. The theory and purpose of the Bankruptcy Act were to distribute the property which the bankrupt owned four months before the filing of the petition in bankruptcy against him share and share alike, among his creditors of the same class. To this end every judgment procured or suffered against him, every transfer by an insolvent of any of his property, every conceivable way of depleting it after the commencement of the four months' period, the effect of which is to enable any one of his creditors to obtain a greater percentage of his debt than any other of such creditors of the same class, is declared to be a voidable preference if the

¹ §60.

² 209 Fed. Rep. 629 (1913).

creditor has reason to believe that a preference is intended thereby. An agreement to transfer is not a transfer. The title remains in the owner unincumbered by the transfer until the transfer is effected. When the agreement is made before, and the transfer within the four months, the title stands unincumbered by the transfer at the commencement of the four months, and the proceeds of that title are pledged under the Bankruptcy Act for the benefit of all the creditors *pro rata*. Any subsequent transfer withdraws the property from these creditors, and a just and fair interpretation and execution of the Act demands that such a transfer should be adjudged voidable if it is otherwise so. Any other result opens a new and enticing way to secure preference, nullifies every provision of the law to prevent them, and invites fraud and perjury. "Hold that transfers within four months in performance of agreements to make them before that time do not constitute voidable preferences, and honest debtors would agree with their favored creditors before the four months that they would subsequently secure them by mortgage or transfers of their property, and just before the petitions in bankruptcy were filed they would perform their agreements. Dishonest men who made no such contracts might falsely testify that they had done so and thus by fraud and perjury sustain preferential transfers and mortgages made within the four months to relatives or friends. The great body of creditors would be left without share in the property of their debtor and without remedy, and a law conceived and enacted to secure a fair and equal distribution of the property of debtors among their creditors would fail to accomplish one of its chief objects." Such is the cogent reasoning in *In re Great Western Manufacturing Company*,³ which led the court to reject the adoption of any such rule so fatal to the most salutary provision of the Bankruptcy Act.

Another similar instance is the case where a debtor, more than four months prior to bankruptcy, has given an irrevocable power of attorney to the creditor to confess judgment, and judgment is confessed under it within four months preceding the bankruptcy. The Supreme Court of United States has held this to be a voidable preference.⁴ Likewise, mortgages executed within the four months in performance of agreements to give them made more than four months before the filing of the petitions in bankruptcy have been held to be voidable preferences.⁵

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³ 152 Fed. Rep. 123 (1907).

⁴ *Wilson v. Nelson*, 183 U. S. 191 (1901).

⁵ *In re Sheridan*, 98 Fed. Rep. 406 (1899); *In re Ronk*, 111 Fed. Rep. 154 (1901); *In re Dismal Swamp Co.*, 135 Fed. Rep. 415 (1905); *Morgan v. Nat'l Bank*, 149 Fed. Rep. 466 (1906); *In re Great Western Mfg. Co.*, 152 Fed. Rep. 123 (1907).